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Automobile Insurance Company

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 ***

13 JB MYERS,

14 Plaintiff,

15 vs.

16 STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign
17 corporation; and DOES I-X, inclusive; and
ROE CORPORATIONS I-X, inclusive,

18 Defendants.
19

CASE NO.: 2:18-cv-501-JCM-CWH

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

20 It appearing to the Court that the Plaintiff JB MYERS ("Plaintiff") and Defendant
21 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("State Farm")
22 (collectively, the "Parties") agree that State Farm possesses proprietary policies and
23 procedures that include confidential information that may be subject to discovery in the
24 proceedings in this matter but which should not be made available to the public generally,
25 this Court hereby orders that:

26 1. This Confidentiality Agreement and Protective Order ("Order") shall govern
27 certain discovery and document production among the Parties, as well as discovery and
28 document production from third parties, in the above-referenced action.

1 2. For purposes of this Order, the term “Confidential Information” shall refer to:
2 (1) information which any party or non-party believes in good faith to be a trade secret or
3 confidential research, development, commercial, or other proprietary business
4 information within the meaning of FRCP 26(c)(1)(G); and (2) documents and/or testimony
5 that may reveal confidential, proprietary, personal or commercially sensitive information.
6 Such Confidential Information may be contained in any written, printed, recorded, or
7 graphic matter of any kind, and shall retain its confidential designation regardless of the
8 medium on which it is produced, reproduced, or stored. Such Confidential Information
9 may also be elicited at deposition or through written discovery.

10 3. Whenever any party or non-party desires to designate information
11 contained in a document as Confidential Information, the designating party shall mark
12 each page of the document with the word “CONFIDENTIAL” and identify such
13 Confidential Information at the time of production. Confidential Information may be used
14 in the course of depositions in accordance with this Order.

15 4. Transcripts or exhibits from any deposition or hearing shall be temporarily
16 designated as “Confidential” and be treated as subject to the terms of this Order. Within
17 forty-five (45) days of receipt of such transcripts and exhibits, Counsel will designate the
18 pages of the transcripts or exhibits which shall remain designated as “Confidential” and
19 will advise all other parties. If no designation is made within forty-five (45) days, the
20 entire transcript and all exhibits will be deemed not confidential.

21 5. All documents produced or information disclosed and any other records
22 designated as “confidential” by State Farm shall be revealed only to:

- 23 a) Plaintiff;
24 b) Plaintiff’s counsel of record in this case;
25 c) Defendant;
26 d) Defendant’s counsel of record in this case;
27 e) Paralegals and secretarial employees under counsel’s direct supervision;
28 f) Outside photocopying, translating, document management, and exhibit

- 1 preparation services engaged by a party for purposes of this litigation;
- 2 g) Persons employed by counsel to act as consultants or experts in this action;
- 3 h) Any other person State Farm agrees in writing may be shown such
- 4 documents; and
- 5 i) The Court and court personnel, stenographic reporters, and videographers
- 6 at depositions taken in this action, and any jury empaneled in this action,
- 7 subject to the protections of Paragraphs 3, 4, and 9 of this Order;

8 6. The information considered as “confidential” and disclosed only in accord

9 with the terms of Paragraph 5 shall include, without limitation, any claims manual, training

10 materials, and any other information or documentation supplied by State Farm and

11 designated as “Confidential.”

12 7. Documents deemed confidential by State Farm shall be used only for the

13 purposes of prosecuting or defending this action. Under no circumstances shall

14 information or materials covered by this Order be disclosed to or discussed with anyone

15 other than the individuals designated in Paragraph 5.

16 8. Prior to disclosure of any documents designated as “confidential” to any

17 individual who is not a signatory to this Order, counsel shall require such individual to

18 read this Order and sign the Agreement which is attached hereto as **Exhibit A** and provide

19 a copy of the signed Agreement to counsel for State Farm.

20 9. Prior to filing any motion wherein information designated as “Confidential” is

21 attached, Plaintiff shall comply with LR IA 10-5(b) and *Kamakana v. City and County of*

22 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006), or provide Counsel for State Farm reasonable

23 time, but in any event not fewer than 10 judicial days, to file a motion pursuant to LR IA

24 10-5(b) and *Kamakana* to show particularized good cause or particularized compelling

25 reasons to file those documents under seal.

26 LR IA 10-5(b) provides:

27 Unless otherwise permitted by statute, rule or prior Court

28 order, papers filed with the Court under seal shall be
accompanied by a motion for leave to file those documents

1 under seal, and shall be filed in accordance with the Court's
2 electronic filing procedures. If papers are filed under seal
3 pursuant to prior Court order, the papers shall bear the
4 following notation on the first page, directly under the case
5 number: "FILED UNDER SEAL PURSUANT TO COURT
6 ORDER DATED ____." All papers filed under seal will
7 remain sealed until such time as the Court may deny the
8 motion to seal or enter an order to unseal them, or the
9 documents are unsealed pursuant to Local Rule.

10 Pursuant to *Kamakana* and LR IA 10-5(b), any documents designated as
11 "Confidential" and attached to a non-dispositive motion must be accompanied by a motion
12 showing a particularized good cause for leave to file those documents under seal.
13 Furthermore, any documents designated as "Confidential" and attached to a dispositive
14 motion must be accompanied by a motion showing a particularized compelling reason for
15 leave to file those documents under seal.

16 10. This Order is subject to revocation and modification by Order of the Court
17 upon written stipulation of the Parties, or upon motion and reasonable notice, including
18 opportunity for hearing and presentation of evidence.

19 11. If any party objects to the designation of materials marked "Confidential,"
20 the objecting Party shall provide written notice of the disagreement to State Farm,
21 requesting a meeting to confer with counsel for State Farm to resolve the dispute over the
22 "Confidential" designation. If the dispute over the designation is not resolved informally,
23 State Farm will file a motion with the Court to resolve the dispute regarding the
24 "Confidential" designation. State Farm will have 30 days from the date in which the
25 parties meet and confer regarding the dispute over the designation in which to file a
26 motion with the Court regarding the designation. In any event, unless and until a Court
27 ruling is obtained changing a designation, or the Party designating the materials as
28 "Confidential" agrees otherwise in writing, the material involved shall be treated according
to the existing "Confidential" designation.

12. This Confidentiality Agreement and Protective Order shall survive the
termination of this case and counsel shall take no action to violate this Agreement.

1 However, this clause does not require counsel to take actions contrary to the Rules of
2 Professional Conduct, which impose an obligation upon counsel to safeguard client
3 property for a reasonable period of time.

4 13. Within 30 days of the final termination of this case, Plaintiff shall return all
5 documents and information subject to this Order, including any copies or extracts or
6 summaries thereof, or documents containing information taken therefrom, to counsel for
7 State Farm. In the alternative, within 30 days of the final termination of this case, Plaintiff
8 may shred or dispose of all such documents, including copies or extracts or summaries
9 thereof, or documents containing information taken therefrom, in a manner to ensure the
10 destruction thereof, and provide a declaration certifying such destruction or disposal to
11 counsel for State Farm.

12 14. In any action or proceeding to enforce this Order, or pursuant to paragraph
13 12, the prevailing party shall be entitled to recover its reasonable attorneys' fees and
14 costs, without limiting any other relief that may be available, provided the Court
15 determines there was a willful and malicious violation of the Confidentiality Agreement
16 and Protective Order.

17 15. This Order shall remain in effect after the conclusion of this case and the
18 Court shall retain jurisdiction to enforce its terms and to prevent or punish violations of it.

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1 16. This Order may be executed in counterparts, each of which shall constitute
2 one and the same agreement.

3 Dated this 8th day of April 2019.

Dated this 8th day of April 2019.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

LAW OFFICES OF ERIC R. BLANK, P.C.

5

6

/s/ Cheryl A. Grames

/s/ Eric R. Blank

7 Robert W. Freeman, Esq.

Eric R. Blank, Esq.

8 Nevada Bar No. 03062

Nevada Bar No. 6910

9 Pamela L. McGaha, Esq.

Darren J. Lach, Esq.

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7860 West Sahara Avenue, Suite 110

Las Vegas, Nevada 89118

Las Vegas, Nevada 89117

Attorneys for Defendant State Farm

Attorneys for Plaintiff JB Myers

Mutual Automobile Insurance Company

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IT IS SO ORDERED:

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DATED: April 10, 2019

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UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO
COMPLY WITH STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER**

The undersigned hereby acknowledges that he/she has been provided with a copy of the Parties' STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER in the lawsuit captioned JB Myers vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (U.S. District Court Case No. 2:18-cv-501-JCM-CWH). The undersigned agrees to be bound by the terms of the referenced *Stipulated Confidentiality Agreement and Protective Order* in the same manner as Plaintiff, Defendant, and their attorneys.

DATED this ____ day of _____, 20__.

By: _____
Litigation Participant - Signature

Name (Printed)

Street Address

City State Zip

Occupation of Business